

would be charged, and by retaining overall supervisory authority over Claimant. Claimant argues that these factors are indicative of an employer/employee relationship. He further contends Defendant made all decisions regarding Claimant's wages – e.g., Defendant paid Claimant in cash and refused to withhold taxes even when Claimant requested that taxes be withheld. Claimant states that Defendant's failure to issue 1099 forms is also indicative that Claimant was an employee and not an independent contractor. Claimant argues he did indeed own his own tools but that this is standard practice for auto mechanics. Defendant owned the larger more expensive equipment that Claimant used on a near daily basis within Defendant's shop, and this equipment was necessary for Claimant's work. Defendant also provided Claimant with coveralls to wear at work as well as all parts necessary for Claimant to complete repair projects. Finally, Claimant argues that Defendant held the right to terminate the employment relationship at any time without liability.

Defendant contends Claimant was an independent contractor and not his employee, when injured on the job. Defendant claims that no time records were kept on behalf of Claimant, but Claimant was paid at a contract rate for each vehicle Claimant worked on. Defendant argues there was a professional relationship between Claimant and Defendant that existed on the level of contractors versus an employee/employer relationship. Defendant further argues that Claimant had control over his hours and could come and go as he pleased. Claimant also had control over the method by which he performed any and all work. Finally, Defendant contends that since no taxes were withheld from Claimant's pay, with Claimant's knowledge, Claimant was an independent contractor.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and the testimony of Defendant;
2. Claimant's Exhibits 1 through 3 admitted at hearing; and
3. Defendant's Exhibit A admitted at hearing.

After having considered all the above evidence and the briefs of the parties, the Commission issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Claimant and Defendant are both automobile mechanics. Claimant began working with Defendant at Defendant's auto-repair shop in December of 2001. Claimant's duties included diagnosing car problems and primarily repairing car problems. Any parts needed for the repair work would be ordered and paid for by Defendant. Defendant also had the authority to direct Claimant on how to perform all repair tasks.

2. Claimant generally worked from 8am until 6pm at Defendant's shop. When a potential customer would bring a vehicle in, the intake procedures would generally go through Defendant with Defendant ultimately determining whether Claimant would work on a car or not. Defendant would direct Claimant to which cars he was to work on. Hearing Transcript p. 10. It was at Defendant's discretion whether Claimant should come in early or stay beyond 6pm to finish working on a particular repair job.

3. While working at the shop, Claimant would wear coveralls provided by Defendant. The coveralls were laundered weekly at Defendant's expense.

4. All payments for repair work were made to the shop. Defendant would collect payment unless he was unavailable to do so on which occasion Claimant indicated he might collect a payment on Defendant's behalf. Customers did not pay Claimant directly for work he performed on their vehicles.

5. Claimant was paid at the rate of \$26 per hour. Defendant set this pay-rate. The amount of time a particular repair job might take was determined with reference to the Mitchell guidelines. Mitchell is a standard used by some auto-repair shops to determine the fair charge a customer should be assessed for a particular repair. Defendant paid Claimant in cash for work performed in Defendant's shop. Sometimes Claimant would be paid on Friday and sometimes he would be paid on a different day of the week. Defendant did not withhold taxes from any of Claimant's pay amounts.

6. Defendant at no time issued a 1099 form to any party for tax purposes.

7. Defendant provided for Claimant to attend training to further his professional abilities as a mechanic. Claimant attended training in Idaho Falls put on by NAPA.

8. Claimant owned and provided his own hand tools for use in the shop. It appears it is common practice within the auto-repair industry for a mechanic to provide his/her own hand tools. Defendant owned and provided the larger, more expensive tools for Claimant to use within the shop. These tools included items such as diagnostic equipment, hoists, jacks, scanners, and so forth. All of these tools were necessary for Claimant to perform his job and were used by Claimant on a frequent basis.

9. Claimant mentioned his desire to quit at one point in time in a conversation with Defendant. It appears as though Claimant and Defendant could end the employment relationship at any time with no consequences. The relationship between Claimant and Defendant appeared to be at will and not under contract.

10. Claimant's alleged hand injury occurred in November of 2003. Claimant stopped working in Defendant's shop in January 2004.

DISCUSSION

Idaho Code § 72-102(11) defines an “employee” as any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. Idaho Code § 72-102(12)(a) defines an “employer” as any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of their being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is secured, it means his or her surety so far as applicable. Idaho Code § 72-102(16) defines “independent contractor” as any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

Coverage under Idaho’s Workers’ Compensation Law is dependent upon the employer/employee relationship. *Anderson v. Farm Bureau Mutual Insurance Company of Idaho*, 112 Idaho 461, 732 P.2d 699 (1987). The integral test that establishes the employer/employee relationship is the “right to control” test. *Ledesma v. Bergeson*, 99 Idaho 555, 557, 585 P.2d 965, 967 (1978). The issue of whether an employee/employer relationship exists is to be decided from all the facts and circumstances established by the evidence. *Id.* at 559. When doubt exists as to whether an individual is an employee or an independent contractor, the Idaho Workers’ Compensation Act must be given a liberal construction in favor of finding the relationship of employer and employee. *Olvera v. Del’s Auto Body*, 118 Idaho 163, 165, 795 P.2d 862, 865 (1990).

There is a distinction between the right to control the time, manner and method of executing the work, and the right to merely require certain definite results. To determine whether a worker is an independent contractor or an employee, we must look at whether the contract gives, or the employer assumes, the right to control the time, manner, and method of executing the work, as distinguished from merely requiring certain results. *Ledesma v. Bergeson*, 99 Idaho 555, 585 P.2d 965 (1978). The four-factor test for determining the right to control is: 1) direct evidence of the right to control, 2) method of payment, 3) furnishing major items of equipment, and 4) the right to terminate the relationship at will. *Kiele v. Steve Henderson Logging*, 127 Idaho 681, 905 P.2d 82 (1995). “When applying the right to control test, the Commission must balance each of the elements present to determine their relative weight and importance, since none of the elements in itself is controlling.” *Id.*, at 683 citations omitted.

Direct evidence of the right to control

1. The record is filled with evidence that points towards Defendant’s right to control. Defendant had the authority to direct Claimant on how Claimant should perform any particular repair job. Defendant would assign repair-duties. Defendant was the party responsible for ordering any parts that Claimant might need for a particular repair job. Defendant also had the ability to tell Claimant when to be at work.

2. As stated in *Ledesma*, there is a difference between merely requiring certain results and actually controlling time, manner, and method of executing work. 99 Idaho 555, 585 P.2d 965. In the case at hand, it is clear that Defendant did not merely require certain results, but did indeed control Claimant’s time, manner, and method of executing work. That Defendant had the ability to tell Claimant when to be at work and how to complete a repair job is indicative of his

role as Claimant's employer. Furthermore, the record demonstrates an instance of Defendant overruling Claimant and specifically directing how Claimant should complete a job on a particular vehicle. Hearing Transcript p. 22.

Method of payment

3. Defendant paid Claimant in cash on a weekly basis. As a general rule Claimant was paid on Fridays unless Defendant did not have the money, in which case Claimant was paid as soon as possible the next week. This method of payment, albeit irregular at times, points towards an employer/employee relationship. Furthermore, Defendant was paying Claimant an hourly wage, which is indicative of an employer/employee relationship.

4. No taxes were withheld from Claimant's pay. This factor is indeed troubling in that it would normally point towards the lack of an employer/employee relationship. In the current instance, however, this factor is not detrimental to Claimant. Claimant and Defendant discussed taxes and having them withheld from Claimant's pay, yet no taxes were ever withheld. Claimant could have been more assertive in his attempts to have taxes withheld from his pay, but he enjoyed the benefits of receiving more wages as a result of not being so assertive. Nevertheless, the record indicates Claimant's desire, albeit lackluster, to have taxes withheld. Moreover, this factor alone would not be enough to show Claimant was an independent contractor.

5. More detrimental to Defendant is his admitted failure to issue 1099 forms for tax purposes, as these would have displayed Claimant's status as an independent contractor.

Furnishing major items of equipment

6. Defendant furnished the major items of equipment necessary for Claimant to do his job. Diagnostic equipment, hoists, jacks, scanners and other items were provided for Claimant's use. Although Claimant did provide his own hand-tools, the larger tools provided by Defendant

were necessary for Claimant to do his job and were used daily. Hearing Transcript pp. 10 – 11, 46.

7. Defendant also provided coveralls that Claimant would wear while at work. Claimant testified that Defendant paid the bill to have these coveralls laundered. Hearing Transcript p. 11.

8. Defendant's actions in providing major tools to use, a uniform for Claimant to wear and the laundering of the uniform, all point towards an employer/employee relationship.

Right to terminate the relationship at will

9. The record contains no restrictions on Defendant's authority to terminate the working relationship with Claimant at any time. Nor was any evidence presented to indicate that Claimant could not quit at any time he chose. Neither party presented any evidence to show that any liability would exist if the employment relationship were terminated unilaterally by either party. There was no contract or term of working relationship between Claimant and Defendant, but merely a casual, voluntary working relationship. This "at will" relationship is indicative of an employer/employee relationship. *Ledesma*, 99 Idaho at 559, 585 P.2d at 969.

10. In summary, Claimant worked for Defendant in Defendant's auto-repair shop. Claimant was not hired on a one-time, contract basis, but was a continual employee. Defendant was a qualified mechanic and did supervise Claimant to the degree that he had the final word in how all repair jobs should be completed. Defendant supplied Claimant with major items of equipment, which were necessary for Claimant to perform his job. Defendant also provided all parts necessary for any repair work. Defendant provided Claimant with a uniform and laundered the uniform. Defendant set Claimant's wage, collected money for work completed by Claimant, and paid Claimant on a weekly basis. Defendant failed to issue 1099 forms for tax purposes. Defendant and Claimant presented no evidence to contradict that the working arrangement was

anything but an “at will” employment relationship. Claimant was an employee of Defendant and, as such, is a covered employee for workers’ compensation purposes.

CONCLUSION OF LAW

1. Claimant was an employee of Defendant during the time-period encompassing the industrial accident.

* * * * *

ORDER

Based on the foregoing, IT IS HEREBY ORDERED That:

1. Claimant was an employee of Defendant during the time-period encompassing the industrial accident.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __26th__ day of May, 2005.

INDUSTRIAL COMMISSION

/s/ Thomas E. Limbaugh, Chairman

/s/ James F. Kile, Commissioner

/s/ R.D. Maynard, Commissioner

ATTEST:

/s/ Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _26th day of May, 2005, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER** was served by regular United States Mail upon each of the following persons:

JOEL E. TINGEY
490 Memorial Drive
P.O. Box 51630
Idaho Falls, ID 83405-1630

G. RICH ANDRUS
25 North Second East
Rexburg, ID 83440

____/s/_____